

**RESOLUTION NO. 75434**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE UPHOLDING THE PLANNING COMMISSION'S DECISION TO ADOPT A NEGATIVE DECLARATION FOR A CONDITIONAL USE PERMIT FOR THE EXPANSION OF AN EXISTING GASOLINE SERVICE STATION ON A SITE LOCATED ON THE SOUTHEAST CORNER OF MCKEE ROAD AND NORTH 33<sup>RD</sup> STREET IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970, AS AMENDED, AND TITLE 21 OF THE SAN JOSÉ MUNICIPAL CODE**

WHEREAS, pursuant to Title 21 of the San Jose Municipal Code, **Victor Yatco on behalf of Moe's Stop**, hereinafter referred to as "Applicant", on April 1, 2009, filed applications for which a Negative Declaration (hereinafter called "ND") was circulated for public review and approved for consideration by the Director of Planning for a proposed Planned Development Zoning District, File No. **CP09-015**, concerning that certain real property hereinafter referred to as "subject property," described in the ND for the "Moe's Stop Project" and made a part hereof by reference as though fully set forth herein; and

WHEREAS, the Director of Planning, Building and Code Enforcement pursuant to, and in accordance with, said Title 21 has prepared an Initial Study and the ND, relating to said subject property; and

WHEREAS, pursuant to and in accordance with said Title 21, the Director sent a copy of the Notice of Intent to Adopt a Negative Declaration, after a public review period from March 30, 2010 to April 19, 2010, to each public agency having jurisdiction by law of said proposed project, resident, and occupant within 1,000 feet of the subject site advising such agencies and individuals to review and submit written comments, if any, to the Director of Planning in the time and manner specified in said Title 21; and

WHEREAS, pursuant to and in accordance with said Title 21, on April 21, 2010, the Planning Commission conducted a hearing on the ND, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said ND; and

WHEREAS, at said hearing, the Planning Commission passed a motion by a vote of 5-0-2, Commissioners Campos and Kamkar absent, to adopt said ND; and

WHEREAS, on April 22, 2010, an Appeal of the adoption of said ND was filed by Andy Saber, 1590 McKee Road, San Jose, CA 95116; and

WHEREAS, notice of the date, time and place of the hearing before the City Council on the Appeal of the adoption of the ND was duly and properly given pursuant to and in compliance with the provisions and requirements of Title 21 of the San José Municipal Code; and

WHEREAS, at the date, time and place provided in said notice, the City Council of the City of San José conducted a public hearing *de novo* on the Appeal of the adoption of the ND and provided all persons with an opportunity to be heard and provide testimony or evidence on the matter of the Appeal of the adoption of the ND.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:**

**SECTION 1.** This Council hereby has considered the whole of the record before it, including the Initial Study, the ND and all related written and oral testimony received, and hereby finds that there is no substantial evidence in the record that approval of the project will have a significant adverse impact on the environment.

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**SECTION 2.** This Council hereby finds, determines and declares the ND for said project has been completed in compliance with CEQA and Title 21 of the San José Municipal Code and represents the independent judgment and analysis of the City of San José.

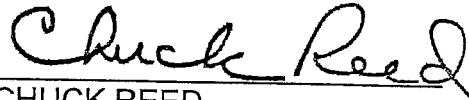
**ADOPTED** and issued this 15<sup>th</sup> day of June 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,  
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

  
CHUCK REED  
Mayor

ATTEST:

  
LEE PRICE, MMC  
City Clerk